

REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 1 and 3-20.

The following claim are *independent*: 1.

The following claim have previously been *cancelled* without prejudice or disclaimer: 2.

The Office Action has indicated the application is in condition for allowance except for the formal matters including: informalities throughout the Specification, alleged defective Oath/Declaration; and filing of a Terminal Disclaimer.

Applicant would like to thank the Examiner for noting claims 1 and 3-20 would be allowable in the Office Action. Further, Applicant would like to thank the Examiner for conducting the Examiner's Interview on April 8, 2010 (hereinafter "Examiner's Interview"). Applicant has addressed each of the formal matters below, according to the discussion with Examiner in the Examiner's interview.

1. Informalities Related to the Specification

Applicant has amended the specification to insert the "BACKGROUND OF THE INVENTION" and "BRIEF SUMMARY OF THE INVENTION." Accordingly, Applicant submits the objection has been overcome.

2. Alleged Defective Oath/Declaration

Pursuant to the Examiner's interview, Applicant would like to thank the Examiner for withdrawing the objection, based on Applicant's confirmation the inventors identified on the Non-Provisional application are the same as listed on the Provisional priority application, related to the alleged defective Oath/Declaration filed in this case.

3. Filing of a Terminal Disclaimer

Claims 1-20 were provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 of Application No. 10/677838 on page 10 of the Office Action mailed on April 3, 2009. Applicant would like to thank the Examiner for withdrawing the statutory double-patenting rejection in the Examiner's Interview. However, the Examiner indicated in the Examiner's Interview that claims 1 and 3-20 are rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-20 of Application No. 10/677838. Applicant submits, that as discussed during the Examiner's Interview, the concurrently filed Terminal Disclaimer should render the obviousness type double patenting rejection moot. Accordingly, Applicant submits that the issues raised by the Examiner with regard to the pending double patenting rejection over U.S. Application No. 10/677838, have been rendered moot.

Applicant submits all formal matters identified by the Examiner in the pending Ex Parte Quayle Office Action have been addressed and the application is in condition for allowance.

CONCLUSION

Applicant asserts that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art to this Office Action (and/or any previous office action(s)) (hereinafter “Office Action(s)”). While many other claim elements and/or bases for rejection were not discussed, as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art, and Applicant reserves the opportunity to more particularly traverse, remark and/or distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to the Office Action(s)’ objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to other Office Action(s) objection(s) and/or rejection(s) as to any other claim element(s), any such re-assertion(s) of remarks are not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim element(s), and no such commonality is admitted as a consequence of any such re-assertion(s) of remarks. Consequently, the reference(s) cited the Office Action(s) do not result in the claimed invention(s), there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed invention(s) are not admitted to be prior art. Also, Applicant does not accept, admit, and/or concede to any assertions, (mis)characterizations (e.g., of claims, references, and/or otherwise), and/or Official Notice(s) in the Office

Action(s). As such, Applicant does not concede that any claim element(s) have been anticipated and/or rendered obvious by any of the cited reference(s) and/or any Official Notice in the Office Action(s). Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 1 and 3-20, all: overcome all rejections and/or objections as noted in the Office Action(s), are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-517. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-517.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
Attorney(s) for Applicant,
CHADBOURNE & PARKE LLP

Dated: April 23, 2010

By: /Daniel C. Sheridan/
Daniel C. Sheridan
Registration No.: 53,585

Correspondence Address:

CHADBOURNE & PARKE LLP
30 Rockefeller Plaza
New York, NY 10112

212-408-5100 (Telephone)
212-541-5369 (Facsimile)
patents@chadbourne.com (E-mail)